IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10439 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

FARID H SALAR, C/O KIRIT C SHAH, ADVOCATE

Appearance:

1. Special Civil Application No. 10439 of 1999

MR HS MUNSHAW for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner - Corporation and Mr.Biren A. Vaishnav, learned advocate for respondent workman.

#. By way of this petition, the petitioner Corporation has challenged the award passed by the Labour Court, Ahmedabad in Reference No.558/1985 dated 12th April, 1999, wherein the labour court has granted reinstatement with continuity of service without backwages of the interim period and imposed penalty of stoppage of three increments with cumulative effect. Learned advocate Mr.B.A.Vaishnav on behalf of the respondent workman has made a statement before this Court that in pursuance of the award passed by the Labour Court, Ahmedabad, the respondent workman has been reinstated in service. This statement has also been made by the respondent workman in para-3 of the affidavit in reply that the respondent workman has been reinstated in service.

#. Learned advocate Mr.Munshaw appearing on behalf of the petitioner Corporation has submitted that the chargesheet dated 17th September, 1982 was served on the respondent workman, wherefrom it reflected that the workman was working as Booking Clerk at Viramgam and he indulged into certain irregularities by not making entry of issuing blocks in CWA to the conductor and that is how the respondent workman has given opportunity to one conductor Shri Babulal Makwana in misappropriating the fund of the Corporation. After issuing chargesheet to the respondent workman, departmental inquiry was initiated against the respondent workman and ultimately the respondent workman was dismissed from service on 2nd March, 1983. This dismissal order was challenged by the respondent workman before the labour court, Ahmedabad. Initially, the labour court has passed order granting reinstatement with continuity of service with full backwages of the interim period. The award passed by the labour court was challenged by the petitioner Corporation before this Court by preferring Special Civil Application No.3546 / 1988 wherein, this Court by order dated 29th January, 1997 has set aside the award in question and remanded the matter to the labour court for fresh consideration. Thereafter, the labour court has again decided the Reference by passing the order dated 12th April, 1999. Learned advocate Mr.H.S.Munshaw appearing on behalf of the petitioner Corporation has submitted that the respondent workman has committed gross misconduct not to make entry CWA while issuing block to one conductor Shri Babulal Makwana and thereby, has given an opportunity to said conductor to misappropriate the amount of Corporation. At that time, the respondent workman was working as Booking Clerk at Viramgam Depot, Ahmedabad Division. Mr.Munshaw, learned advocate has also submitted that past record of the respondent workman was bad and the labour court has committed gross error in

granting the relief in favour of the respondent workman. He has also submitted that in such cases, the labour court should not have exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. Mr.Munshaw, learned advocate has also submitted that the reply vide Exh.25, the respondent workman has admitted the misconduct but requested to consider his case as it was his first misconduct committed by him.

#. Learned advocate Mr.Biren Vaishnav on behalf of the respondent workman has submitted that in past record of the respondent workman, there was no serious misconduct committed by the respondent workman. However, Mr.Vaishnav, learned advocate submits that in facts and circumstances of the incident in question, there was some bonafide mistaken on the part of the respondent workman and as such, there was no malafide intention on the part of workman to willfully commit such misconduct and therefore, the labour court has rightly appreciated the evidence led in the departmental inquiry and ultimately, come to the conclusion that it was first misconduct looking to the past record of the respondent workman and therefore, the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 and granted reinstatement with continuity of service while denying the backwages by way of penalty and also imposed penalty of stoppage of three increments with cumulative effect. Therefore, Mr.Vaishnav submits that no error has been committed by the labour court which requires any interference of this Court. However, Learned advocate Mr.Vaishnav has pointed out that in the said incident, in all three employees viz. S/Shri D.S.Parmar, L.K.Dalwadi and the present petitioner have received chargesheet. He further submits that in respect of the award passed in favour of Shri D.S.Parmar, wherein the labour court has granted reinstatement with continuity of service without backwages of interim period and imposed penalty of stoppage of three increments with cumulative effect. It is also pointed out that in case of Shri D.S.Parmar also, identical allegations have been made by the petitioner Corporation. Said award passed by the labour court in favour of said D.S.Parmar was challenged by the Corporation in Special Civil Application No.3611 / 1994, wherein this Court has by order dated 12th April, 1996 rejected the petition filed by the petitioner Corporation, against which, Letter Patent Appeal No.567 / 1996 was preferred before this Court by the petitioner Corporation and said LPA has also been dismissed by the Division Bench of this Court by order dated 30th August, 1996. While relying upon said decision rendered by the Division Bench of this Court in

matter of co-delinquent involved in the incident, submission of Mr.Vaishnav, learned advocate for respondent is that the respondent workman is also facing same charge which was faced by said Shri D.S.Parmar. Therefore, he submitted that in identical charge, this Court has already taken view, wherein same relief has been granted in favour of the respondent workman and therefore, no interference is called for in the award passed in favour of the respondent workman.

#. I have considered submissions made by the learned advocates for the parties. Before the labour court, statement of claim was filed by the respondent workman vide Exh.4 and thereafter, the written statement was filed by the petitioner Corporation. Thereafter, documentary evidence produced by the petitioner Corporation. The respondent workman has filed Purshis vide Exh.25 not to challenge legality and validity of the departmental inquiry proceedings but challenge is confined to finding given by the competent authority. Thereafter, both the parties have produced written arguments before the labour court. The labour court has considered the merits of the matter and considering the past record of the workman concerned, ultimately, has come to the conclusion that past record of the workman, wherein seven misconducts have been committed but none of the misconduct is serious in nature but in view of the labour court, the incident in question is first misconduct committed by the respondent workman. On the basis of the said finding, the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 and come to the conclusion that if backwages of the interim period is denied to the respondent workman and some punishment is imposed on the respondent workman, will the meet the ends of justice. Accordingly, the labour court has denied the backwages of the interim period and punishment of stoppage of three increments with cumulative effect has been imposed on the respondent workman. In the present case, backwages has been denied to the respondent workman for the period from 1983 to 1999. According to my opinion, punishment awarded by the labour court can be said sufficient punishment to respondent workman who remained out of job since 1983 to 1999. The labour court has rightly considered gravity of misconduct and past record and imposed punishment of stoppage of three increments with cumulative effect. Moreover, considering the fact that for identical charge against the co-delinquent Shri D.S.Parmar and the fact that this Court has rejected the petition and LPA filed by the petitioner Corporation. Therefore, considering all these aspects of the matter, according to my opinion,

the labour court has rightly passed the award granting reinstatement without backwages of the interim period and imposed penalty of stoppage of three increments with cumulative effect and therefore, no error apparently on the face of the record seems to have committed by the labour court. As such, no jurisdictional error or no procedural irregularity seems to have committed by the labour court, which in any way call for any interference of this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. Learned advocate Mr.Vaishnav on behalf of the respondent workman has submitted that first award passed by the labour court and same was challenged by the petitioner Corporation before this Court and on that occasion, benefits under Section 17-B of the I.D.Act was paid to the respondent workman but said amount which was paid under the provisions of Section 17-B of the I.D.Act, 1947 to the respondent workman in respect of earlier proceedings, wherein the matter was remanded back by this Court to the labour court. It is further submitted that the Corporation has recovered the amount of Rs.46,119/pursuant to order dated 28th October, 1999. According to learned advocate Mr.Vaishnav, said amount cannot be recovered by the Corporation and therefore, the respondent workman is entitled to said amount from the Corporation. However, Mr.Vaishnav has relied on decision of the Apex Court in case of DENA BANK VS. KIRIT I. PATEL reported in 1997 [2] GLH 946, in support of his submission on this aspect, wherein the Apex Court has held that whatever payment made under Section 17-B of the I.D.Act, 1947 if ultimately result goes against the workman, even then, such amount cannot be recovered from the workman or the same would not be refundable to the employer. In short, submission of Mr.Vaishnav, learned advocate that the petitioner Corporation has illegally withdrawn said amount from the respondent workman.

#. However, learned advocate Mr.Munshaw on behalf of the petitioner Corporation has submitted that this being independent orders, this Court may not consider such request in present proceedings. Considering submissions of the learned advocates for the parties, in view of this Court, ultimately the order passed by the Corporation in respect of the earlier proceedings which are continued even in present proceedings and such illegal action to recover the amount which was paid to the respondent workman under Section 17-B of the I.D.Act, 1947, has been recovered, which is contrary to the law laid down by the Apex Court in case relied on by Mr.Vaishnav. The relevant observations made by the Apex Court in Head Note

[A] is referred as under :-

"As indicated earlier S.17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn". To read words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is not refundable or recoverable in the even of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in S.17-B to cast such a burden on the employer. In our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Vishveswaraya Iron & Steel Ltd [Supra] or the Bombay High Court in Carona Sahu Co. Ltd [Supra]."

#. In view of above observations made in decision of the Apex Court and considering the object under Section 17-B of the I.D.Act, 1947, it is directed to the petitioner

Corporation to pay the amount of Rs.46,119/- to the respondent workman within period of two months from the date of receiving the copy of this order. The respondent workman has filed affidavit-in-reply, against which, no rejoinder is filed by the Corporation.

In view of above observations and directions, there is no substance in the petition, which requires rejection and the same is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. Directions to be complied with accordingly.

Direct Service to respondent is permitted.

Date : 9-5-2002 [H.K.Rathod, J.]

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